Filed 1/29/10 In re Christina H. CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re CHRISTINA H., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. CHRISTINA H., Defendant and Appellant.	A124736 (Alameda County Super. Ct. No. J185877)

Christina H., now an adult, appeals a dispositional order of April 22, 2009, continuing her wardship and placing her on home supervision probation after the court sustained an amended subsequent petition (Welf. & Inst. Code, § 602, subd. (a)) for sale of cocaine (count 1; Health & Saf. Code, §§ 11352, subd. (a)). She claims lack of substantial evidence to support the offense. We affirm the judgment.

BACKGROUND

Challenged is a finding that on the afternoon of March 14, 2009, when Christina was still 17 years old, she sold a rock of cocaine to Don Hamilton near Martin Luther King Jr. Way (hereafter MLK, as in testimony) and 26th Street in the City of Oakland. Oakland Police Department (OPD) Officers Eric Karsseboom, Marcell Patterson, William Griffin, and Trent Thompson each testified.

The officers' combined testimony reveals the operation of a drug enforcement team of about eight officers of which they were a part that afternoon. Karsseboom and Patterson, with respective experiences of 15 and 10 years with OPD, were surveillance officers, in plain clothes and separate unmarked cars, while Griffin and Thompson were in uniform and riding together in a marked patrol car, as members of an arrest team. A surveillance officer would spot drug transactions and, remaining under cover, alert uniformed officers to conduct arrests. The buyer was arrested first, the seller being arrested only after drugs were recovered from the buyer. It was also the preference of Karsseboom, and the District Attorney's office, to wait for a second sale before arresting the seller. Thompson explained: "If you're an undercover officer, you lead your arrest team to arrest the buyers first because you need to recover the drugs before you arrest the seller."

Karsseboom testified in part as an expert on drug possession for sale, as he had some 50 times before. He had 1,000 hours of narcotics training, plus experience with several thousand narcotics investigations, including probably over 100 in "the Martin Luther King corridor" they worked that day. Thompson, whose twice weekly experience on the drug enforcement team was mostly as an arrest officer with the rest surveillance work, testified in part as an expert in what buyers and dealers do in the street level cocaine business.

As Karsseboom drove down MLK, he saw three people loitering near the corner, in the 600 block of 26th Street. He drove on, but returned 10 minutes later, parking at the south curb on 26th facing MLK. He saw two people there and watched them through binoculars from the back seat of his car through his windshield (his rear and side windows being tinted), at a distance of about 100 feet. His unobstructed view with the amplification allowed him to see, in a single view, the two from the knees up. They stood outside a black iron gate to the driveway of a residence on 26th Street, three or four houses from MLK.

One person, later identified as Christina, seemed from her appearance and rather masculine mannerisms to be a 16- to 17-year old Black male. She wore a black hooded

sweatshirt or jacket, a white T-shirt under it, rather baggie dark blue jeans, white tennis shoes, a red baseball cap turned backward, and had her hair in "twisties." The other person, never identified, was a Black male about 18 and a few inches taller than Christina, who was just five foot one inch and a bit over 100 pounds. Karsseboom did not know either person. He watched them for about 10 minutes, getting a clear view in the early afternoon light, and lost sight of them only when they went to the house. Christina twice went to the rear of the property, returning each time with her appearance unchanged.

Karsseboom then saw a third person, a Black man age 50 or older wearing a light powder blue top, blue pants or jeans, and a dark-colored hat. Later identified as Don Hamilton, the man came into view at the southwest corner pushing a shopping cart, left it there, and walked westward toward Christina, meeting her at the threshold of the gate in front of the house. The other male went to the corner and stood looking up and down the street as if he were a lookout. After a "real brief conversation" inaudible to Karsseboom from his surveillance position, Hamilton handed Christina at least one monetary bill with his right hand cupped palm up. The bill was straight, not crumpled, and Karsseboom saw three fourths of it. Christina "took the bill with her right hand and, in one motion, dropped a small object into Hamilton's right hand," which he closed into a fist before walking back to MLK. The entire transaction took just 15 to 20 seconds. Karsseboom suspected a sale of rock cocaine. He did not see an actual rock but saw Christina "holding a small object or something" between her forefinger and thumb and drop it into Hamilton's palm.[1]

In Karsseboom's experience, this was a hand-to-hand narcotics transaction. He radioed team officers that he "had one" (meaning a buyer) and described Hamilton and his path of travel as Hamilton walked back to the corner, got his cart, and continued with

[1] The officer did not see where Hamilton got the bill or bills but demonstrated on the stand how Hamilton held them.

it north, across 26th Street and up the west sidewalk of MLK. The other male meanwhile walked back to the house, passing but making no physical contact with Hamilton.

The other officers heard the broadcast at 1:40 p.m. Patterson, who was parked on MLK about 100 feet south of 26th Street, spotted Hamilton and his cart, radioed that he had him in sight, and trailed some distance behind in his car until officers Griffin and Thompson arrived and made the arrest on 27th Street. Karsseboom stayed put but saw Patterson drive past at 26th Street. After Patterson saw broadcast that Hamilton was arrested, he went back to his surveillance spot on MLK.

Griffin and Thompson arrived within minutes and, as soon as Hamilton was outside the view of the surveillance area so as not to arouse suspicion, detained him near an apartment building on 27th Street. It was only about 200 feet away from 26th Street, and none of the officers saw Hamilton contact anyone to the point of the detention. Once advised by Griffin that he was being stopped for a narcotics transaction and that he and his belongings would be searched, Hamilton reached into his left pocket and produced an off-white, rock-like substance stipulated at trial to contain .17 grams of cocaine base. Hamilton was arrested. Thompson gave him *Miranda* advice (*Miranda v. Arizona* (1966) 384 U.S. 436) and asked him "where he bought his cocaine from," and from whom. Hamilton said "he bought it on 26th Street on the corner by M.L.K." from a Black male of dark complexion, six feet tall, 160 pounds, in his mid-20's, wearing a black shirt and jeans. He said he had bought from the person before.[2]

Karsseboom learned of the arrest and rock of cocaine within a four or five minutes of making his call, but held off arresting Christina, continuing his surveillance in hopes of seeing a second sale. He radioed Patterson a description of her (a boy at that point as far as he or Patterson could tell). The officers watched her and stayed in radio contact until 3:45 p.m., but neither one saw her make another sale. She occasionally mounted a silver bicycle and rode up or down MLK, but always returned. Finally, at 3:45 p.m., Christina

[2] Hamilton's statements came in through Thompson, the court having found Hamilton unavailable based on his having a shopping cart and having given the officers an address that proved to be nonexistent but near a homeless shelter.

rode down 26th Street past Karsseboom and turned down a street out of his or, apparently, Patterson's view. Karsseboom radioed to have her arrested at that point, but no arrest teams were available. Karsseboom stayed for more than an hour more but did not see her again. Just before 5:00 p.m., he called off the surveillance and took an hour long break to get something to eat.

Karsseboom and Patterson returned to that area after dark, around 8:15 p.m. As Karsseboom drove onto 26th Street from MLK, he spotted Christina and a Black male later identified as Mario Thomas walking away from the house. The officers called for an arrest team, and one arrived within a minute or two and arrested Christina. The officers evidently determined her sex only then. (Karsseboom did not know whether Christina had any cash on her.)

Speaking as an expert with 25 to 40 team arrests in his experience, Thompson said he routinely asked buyers where they got their drugs. He got statements from about half of them, and 65 to 70 percent of those would give him "as much information about their seller as [they] c[ould] without having to give up [their] seller." A buyer feels pressure to give information in hopes of avoiding arrest but has three reasons to lie and divulge as little as possible: (1) he is comfortable with, and reluctant to lose, his seller; (2) there can be "severe repercussions, including death," if the seller finds out the buyer has given him up; and (3) the buyer is often high during the purchase and needs to go back to "maintain a constant high throughout the day," without lows.

The drug sales and arrests of Christina and Hamilton were not the only ones that day in that area. There were five or six others. Karsseboom saw some for which he was not involved in arrests, like one that occurred on his block outside his view and for which he referred other officers. Thompson knew the house on 26th Street as a spot where drugs were sold, and he knew that two brothers associated with the house were on probation for cocaine base sales. "The main hot block" was at 26th Street and MLK, and Thompson did not know of other such spots on 26th Street.

DISCUSSION

Christina claims insufficient evidence to support a sale of cocaine. "When reviewing a judgment, an appellate court 'must determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." [Citation.] "[T]he court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." [Citation.] We " 'presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.' " [Citation.]' [Citation.]" (*In re Manuel G.* (1997) 16 Cal.4th 805, 822.)

We review a wardship finding, as we do a criminal conviction (*In re Roderick P.* (1972) 7 Cal.3d 801, 809), for "whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt." (*People v. Mincey* (1992) 2 Cal.4th 408, 432.) "The People . . . may rely on circumstantial evidence to connect the defendant with the commission of the crime charged and to establish beyond a reasonable doubt that he committed it." (*People v. Reilly* (1970) 3 Cal.3d 421, 424.) "It is the trial court's role to assess the credibility of the various witnesses [and] to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citation.]" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.)

Christina does not claim lack of support for her making a cash transaction with Hamilton or that officers minutes later arrested the same person. She contends that insufficient evidence shows that she sold Hamilton the rock of cocaine he produced from his pocket. Relying on appellate cases finding lack of probable cause, a lesser standard than proof beyond a reasonable doubt (*People v. Hurtado* (2002) 28 Cal.4th 1179, 1188-1189), she argues that her cash transaction for an unseen item in a high crime area was not enough (*Cunha v. Superior Court* (1970) 2 Cal.3d 352, 355, 357 [looking around

while trading something for cash in area known for narcotics traffic]) and that Hamilton's claim of buying from a Black man wearing a black shirt and jeans was "ubiquitous" attire that could have described many people. (*People v. Curtis* (1969) 70 Cal.2d 347, 358 [male African American in white shirt and tan trousers]; *People v. Mickelson* (1963) 59 Cal.2d 448, 454 [tall White man with dark hair and red sweater].)

Christina urges that the logic of probable cause cases applies to her substantial evidence challenge, and we agree. We disagree, however, that the results necessarily control. As noted above, we review a wardship finding deferentially, for substantial evidence; we review only the historical facts of a search and seizure ruling deferentially, otherwise applying independent review. (*People v. Parson* (2008) 44 Cal.4th 332, 345, & fn. 4.) Thus the same record that might yield an independent conclusion of no probable cause might support a fully deferential conclusion that substantial evidence exists.

But taking first the "ubiquitous" and non-incriminating nature of Hamilton's description of his seller, this posed a question of credibility that was subject to rejection under either standard of review. The trial court implicitly—and reasonably—disbelieved Hamilton's description, and credited expert testimony that a buyer who reveals anything at all is apt to lie or be vague about details that could jeopardize his source.

As for Hamilton's rock of cocaine being sold by Christina, she does cite two substantial evidence cases. In one, a conviction was overturned because, among other things, there was no testimony whether an informant used to make a controlled buy from the defendant might have contacted (and bought from) someone else between leaving officers and returning to them with heroin and without the cash given to him. (*People v. Morgan* (1958) 157 Cal.App.2d 756, 758.) In the other case, a conviction was upheld, albeit with concern that the informant had merely been pat searched before she left the officers. (*People v. Wilkins* (1960) 178 Cal.App.2d 242, 245 [she was nevertheless under constant surveillance, wore a tight-fitting knit dress, carried no handbag, and made no motions toward her body; and defendant afterward had marked bills].) The court noted:

"The reason for such a search is to prevent an informant from hiding on his person narcotics which he may later claim were obtained from another person." (*Ibid.*)

We initially distinguish controlled buy cases from the one before us. Here, there was no informant with a motive to produce falsely incriminating evidence to satisfy the police. The buyer was presumably acting on his own and, according to expert testimony found persuasive by the trial court, with motives to *avoid* incriminating his seller. There is also no way for police to search an "uncontrolled" buyer like Hamilton or know ahead of time whether he will buy, and we know of no case law suggesting such a requirement for an uncontrolled buy. Further, the buyer in our case was in view of police the entire time between the transaction and the arrest a few minutes later.

Christina would next have us infer that, because the arresting officers did not say which "narcotics transaction" they were investigating, Hamilton may have thought they meant one that occurred earlier in the same, drug infested area, *before* he interacted with Christina. The fundamental flaw in this theory is that we must defer to any supported inferences *to the contrary* (*People v. Reilly, supra,* 3 Cal.3d 421 at pp. 424-425), and the court could reasonably infer that Hamilton, who was never out of the officers' view for the few minutes between meeting Christina and being detained 200 feet from the corner of MLK and 26th Street, knew well that the "transaction" of interest was the one with Christina. The court could reasonably infer, further, that Hamilton correctly identified the rough location, knowing that the officers already knew the location, while describing his seller falsely and in such general terms (a young Black man of average height and weight and nondescript attire) that he would not give Christina away.

On the matter of the cash transaction being for an unseen item and in an area known for narcotics deals, our facts are easily distinguished from those in her cited case, where officers saw only a furtive looking cash exchange in a narcotics infested park (*Cunha v. Superior Court, supra*, 2 Cal.3d at pp. 355, 357.) The People here did not rely just on the MLK corridor or "hot block" being a high narcotics area. This transaction took place in front of a particular house known to Officer Karsseboom as one where drug sellers operated and where two probationers with drug convictions stayed. Christina even

went in and out of the house twice in the 10 minutes before she transacted with Hamilton, as did the young man in her company who acted as a lookout during the transaction. Also, the officer specifically described Christina as taking cash and, in the same motion, dropping into Hamilton's palm something she held pinched between her thumb and index finger. Nothing but a drug transaction initially springs to mind. Christina also does not posit any innocent account of what, if not drugs, would be held that way, and the trial court's observation of Officer Karsseboom's physical demonstration at trial is entitled to special deference as something that is not fully replicated on the appellate record (*People v. Buttles* (1990) 223 Cal.App.3d 1633, 1639-1640; fn. 1, *ante*).

Christina next faults the evidence for not showing whether Hamilton and his belongings were searched after he produced the rock of cocaine from his pocket. Her point is that, if what Hamilton produced was from a different transaction, "[w]hatever he obtained from appellant, if anything, remained undiscovered" and therefore unproven. We have already held that the trial court could reasonable infer that Hamilton removed the rock from his left pocket knowing full well what "transaction" the police were inquiring about, and the court had no reason to think that Hamilton would produce cocaine if, in fact, he had transacted with Christina for something innocent.

Finally, relying on a case that distinguished *Cunha* based in part on observations that a buyer put something into the very pants pocket from which drugs were found, the seller made another sale 40 minutes before and went to a house where police suspected he had a drug "stash," and numbers of prior arrests in the area that produced convictions (*People v. Maltz* (1971) 14 Cal.App.3d 381, 387-393 [reversing ruling to set aside the information]), Christina criticizes our record as containing none of those facts. We see no point in dwelling on each of them, or facts present here but not in *Maltz*. No two cases are exactly the same, of course, and *Maltz* does not suggest that the facts stressed by Christina are vital to every question of substantial evidence.

Substantial evidence supports the conviction.

DISPOSITION

The judgment is affirmed.

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Richman, J.

We concur:

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Kline, P.J.

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Haerle, J.